

Judge: Christopher M. Alston
Chapter: 13
Hearing Date: November 02, 2023
Hearing Time: 9:30 am
Hearing Location: Judge Alston's Courtroom
700 Stewart St #7206
Seattle, WA 98101-8101
Response Date: October 26, 2023

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In Re:

MIKHAIL NEVLER,

Debtor.

IN CHAPTER 13 PROCEEDING
NO. 22-11499-CMA

**OBJECTION TO MOTION TO MODIFY
CONFIRMED PLAN**

Jason Wilson-Aguilar, Chapter 13 Trustee, objects to the Debtor's Motion to Modify Confirmed Plan (ECF No. 110).

The Trustee objects to the debtor's motion and associated modified plan (ECF No. 108) on the following bases:

1) It appears that the debtor used the incorrect docketing event for his modified plan. He should file any further plans using the correct entry for a modified plan.

2) A debtor seeking post-confirmation plan modification must, contemporaneously with filing the motion and modified plan, file a declaration explaining the need for the modification. Local Rule W.D. Wash. Bankr. 3015-1(i). The debtor has not filed this declaration. A post-confirmation modified plan must be proposed in good faith. 11 U.S.C. §§ 1329(b)(1); 1325(a)(3). As part of the good faith analysis, the Court may consider whether the proposed modification correlates to the debtor's change in circumstances. *Mattson v. Howe* (In re *Mattson*), 468 B.R. 361, 371 (B.A.P. 9th Cir. 2012). The debtor has the burden to establish that the modified plan is proposed in good faith. *Id.* at 372. The debtor has not met his burden.

**OBJECTION TO MOTION TO MODIFY CONFIRMED
PLAN - 1**

Jason Wilson-Aguilar
Chapter 13 Bankruptcy Trustee
600 University St. #1300
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2 3) Likewise, a debtor seeking post-confirmation plan modification must, contemporaneously with
3 filing the motion and modified plan, provide the Trustee proof of income received within the last
4 thirty days. Local Rule W.D. Wash. Bankr. 3015-1(i). The debtor failed to comply with this
5 requirement and thus again, has not met his burden of proving that he filed the modified plan in good
6 faith.
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8 4) Section X.C. of the debtor's proposed modified plan states, "The debtor has listed his Arizona
9 property for sale. Asking price is \$85,000.00 but has yet to sell. Debtor will drop the price every two
10 weeks by \$10,000.00 until the property sells. If the property does not sell at \$60,000.00 the property
11 will be surrendered." Section X.D. provides: "All nonexempt proceeds from the sale of the Yavapai
12 County undeveloped lot will be paid into the plan for the Trustee to disburse to general-unsecured
13 creditors." As set forth on Schedule A/B (ECF No. 13), the debtor owns three parcels of real estate,
14 and the only one that is in Arizona, is the property in Yavapai County. Thus, it appears Section X.C.
15 and X.D. of the plan refer to the same piece of real property, although they each describe it
16 differently. The language in Section X.C. is problematic for multiple reasons. First, it contains
17 findings of fact related to the debtor's marketing efforts for the real property which are unnecessary,
18 not verifiable by the Trustee, and inappropriate for the plan. Second, this provision is confusing, as
19 there is no clear deadline by which the debtor will sell the property, and no clear remedy if he fails to
20 sell it by that deadline (given that it will not be evident from the record of the case if/when the
21 triggering event for surrender of the property has occurred). Finally, even if this provision were more
22 clear as to how/when the property is to be surrendered, that is not an appropriate remedy should the
23 debtor fail to sell the property. As noted above, Section X.D. of the plan provides for use of the
24 proceeds of sale of the Arizona property to pay unsecured claims. The plan is not feasible based on
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OBJECTION TO MOTION TO MODIFY CONFIRMED
PLAN - 2

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2 plan payments alone, and would only be feasible with this lump sum payment from sale. And, as set
3 forth in Section IX. of the plan, the estate has a significant liquidation value which makes it solvent,
4 the majority of which comes from the debtor's Arizona real property. For those reasons, the
5 appropriate relief if the property is not sold is conversion of the case to a Chapter 7, so that a Chapter
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7 Trustee can administer the property for the benefit of creditors, rather than surrender of the property.
8 The debtor needs to amend Section X.C. to provide a reasonable deadline by which the Arizona
9 property will be sold, and to provide that if the debtor fails to meet that deadline, upon submission of
10 an order of conversion by the Trustee, the case shall be converted to Chapter 7.

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12 5) In sum, the debtor's proposed modified plan does not satisfy the requirements of 11 U.S.C. §
13 1329.

14 6) The Trustee reserves the right to assert additional bases for this objection.

15 WHEREFORE, the Chapter 13 Trustee requests that the Court deny the Debtor's Motion to Modify
16 Confirmed Plan (ECF No. 110).

17 Dated: October 26, 2023

18 /s/ Emily A. Jarvis, WSBA #41841 for
19 Jason Wilson-Aguilar
20 Chapter 13 Trustee
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